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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Cassandra Marie Martinez,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-23-00562-PHX-DWL

ORDER

15 This is a Social Security appeal. On April 11, 2023, the Court referred the matter
16 to Magistrate Judge Willett for the preparation of a report and recommendation (“R&R”)
17 as to the final disposition. (Doc. 9.) On January 25, 2024, Judge Willett issued an R&R
18 concluding that the ALJ’s decision should be reversed and the case remanded for
19 calculation of benefits. (Doc. 23.) The Commissioner has, in turn, filed amended
20 objections to the R&R (Doc. 26-2) and Plaintiff has filed a response (Doc. 25).

21 For the following reasons, the Commissioner’s amended objections are sustained in
22 part and overruled in part—the Court agrees with the R&R that the ALJ’s decision must
23 be reversed but concludes that the appropriate remedy is a remand for further proceedings,
24 not a remand for calculation of benefits.

25 **DISCUSSION**

26 **I. Legal Standard**

27 Under 28 U.S.C. § 636(b)(1)(B), a district judge may “designate a magistrate judge
28 to . . . submit to a judge of the court proposed findings of fact and recommendations for

1 the disposition” of a dispositive matter. *Id.* As noted, the Court made such a referral here.
 2 (Doc. 9.)

3 “Within fourteen days after being served with a copy [of the R&R], any party may
 4 serve and file written objections . . . as provided by rules of court. A judge of the court
 5 shall make a de novo determination of those portions of the report or specified proposed
 6 findings or recommendations to which objection is made. A judge of the court may accept,
 7 reject, or modify, in whole or in part, the findings or recommendations made by the
 8 magistrate judge. The judge may also receive further evidence or recommit the matter to
 9 the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1). *See also* Fed. R. Civ. P.
 10 72(b)(2)-(3).

11 “In providing for a de novo determination . . . Congress intended to permit whatever
 12 reliance a district judge, in the exercise of sound judicial discretion, chose to place on a
 13 magistrate’s proposed findings and recommendations. . . . [D]istrict courts conduct proper
 14 de novo review where they state they have done so, even if the order fails to specifically
 15 address a party’s objections.” *United States v. Ramos*, 65 F.4th 427, 433 (9th Cir. 2023)
 16 (citations and internal quotation marks omitted). *See also id.* at 434 (“[T]he district court
 17 ha[s] no obligation to provide individualized analysis of each objection.”).

18 Additionally, district courts are not required to review any portion of an R&R to
 19 which no specific objection has been made. *See, e.g., Thomas v. Arn*, 474 U.S. 140, 149-
 20 50 (1985) (“It does not appear that Congress intended to require district court review of a
 21 magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when
 22 neither party objects to those findings.”); *United States v. Reyna-Tapia*, 328 F.3d 1114,
 23 1121 (9th Cir. 2003) (“[T]he district judge must review the magistrate judge’s findings and
 24 recommendations de novo *if objection is made*, but not otherwise.”). Thus, district judges
 25 need not review an objection to an R&R that is general and non-specific. *See, e.g., Warling*
 26 *v. Ryan*, 2013 WL 5276367, *2 (D. Ariz. 2013); *Haley v. Stewart*, 2006 WL 1980649, *2
 27 (D. Ariz. 2006).

28 ...

1 II. The R&R

2 The rulings in the R&R can be summarized as follows.

3 First, the R&R concludes that the ALJ provided legally insufficient reasons for
4 discrediting the opinions of Plaintiff’s treating physician, Rachel Sy, D.O. (Doc. 23 at 8-
5 10.) More specifically, the R&R concludes that the ALJ’s reasons for discrediting Dr. Sy’s
6 opinions—a lack of support in Dr. Sy’s own treatment records, inconsistency with the
7 medical evidence of record and other medical sources’ opinions, and evidence of
8 improvement from treatment—were inadequately explained because “the exhibits cited by
9 the ALJ consist of hundreds of pages,” “Defendant concedes that a number of Dr. Sy’s
10 records note remarkable findings,” “Plaintiff cites additional records in which Dr. Sy notes
11 remarkable examination findings,” and “the undersigned is not persuaded that the records
12 cited by the ALJ are self-evidently contradictory and thereby eliminate the need for
13 additional explanation.” (*Id.*)

14 Second, the R&R concludes that the ALJ provided legally insufficient reasons for
15 discrediting the opinions of Swaraj Singh, M.D. (*Id.* at 10-11.) As with Dr. Sy, the R&R
16 concludes that although the ALJ asserted that Dr. Singh’s opinions were unsupported by
17 Dr. Singh’s treatment notes and inconsistent with the other medical evidence in the record,
18 those assertions were inadequately explained because “[t]he exhibits cited by the ALJ . . .
19 consist of hundreds of pages” and “[t]he undersigned does not find that the records cited
20 by the ALJ are self-evidently contradictory and thereby eliminate the need for additional
21 explanation.” (*Id.*) The R&R further concludes that although the ALJ identified Plaintiff’s
22 improvement from treatment as an additional basis for discrediting Dr. Singh’s opinions,
23 that rationale was faulty because “even with the Botox treatments, Plaintiff presented to
24 the Emergency Room for treatment of headaches over twenty times since her 2018 benefits
25 application.” (*Id.* at 11.)

26 Third, the R&R concludes that the ALJ provided legally insufficient reasons for
27 discrediting Plaintiff’s symptom testimony. (*Id.* at 12-15.) Among other things, the R&R
28 states that although the ALJ “erroneously recount[ed] that medical records indicate that

1 following Botox treatments, Plaintiff ‘reported a decrease in the number of migraines and
 2 good relief for three months,’” “[t]he records actually state that Plaintiff reported that the
 3 ‘[f]irst 2 months are really good after botox’”; that “the ALJ did not explain which of
 4 Plaintiff’s statements and activities of daily living support the ALJ’s conclusion that
 5 Plaintiff is capable of performing substantial gainful activity”; and that “[t]he ALJ’s
 6 decision requires the Court to speculate as to the grounds for the ALJ’s conclusion that
 7 Plaintiff’s testimony conflicts with the medical evidence.” (*Id.*)

8 Fourth, the R&R concludes that the appropriate remedy for these errors is a remand
 9 for calculation of benefits. (*Id.* at 15-17.) The R&R elaborates: “[T]he undersigned finds
 10 no outstanding issues of fact to be resolved through further proceedings. . . . The VE’s
 11 testimony establishes that if Plaintiff’s symptom testimony and the opinions of Drs. Sy and
 12 Singh were credited as true, the ALJ would be required to find that Plaintiff is disabled.
 13 The undersigned does not find any material evidence in the record that creates serious
 14 doubt that Plaintiff is in fact disabled. Therefore, based on the record, the undersigned
 15 finds it inappropriate to remand the case for further proceedings.” (*Id.*)

16 III. Analysis

17 The Commissioner objects to all of the R&R’s conclusions. (Doc. 26-2.)

18 As for Drs. Sy and Singh, the Court concludes (after conducting the required *de*
 19 *novo* review) that the R&R’s conclusions should be affirmed. *Ramos*, 65 F.4th at 433-34.
 20 Although the reasons the ALJ identified for discrediting those doctors’ opinions would
 21 have been legally sufficient had they been adequately explained, the R&R correctly
 22 concludes that the lack of a sufficiently detailed and supported explanation precludes
 23 affirmance. *Woods*, 32 F.4th at 792 (“Even under the new regulations, an ALJ cannot reject
 24 an examining or treating doctor’s opinion as unsupported or inconsistent without providing
 25 an explanation supported by substantial evidence.”). The Court also disagrees with the
 26 Commissioner’s contention that Plaintiff forfeited any challenge the ALJ’s analysis of the
 27 supportability factor by failing to raise such a challenge in her opening brief (Doc. 26-2 at
 28 8, 11)—as Plaintiff correctly notes (Doc. 25 at 7), the opening brief can be reasonably

1 construed as challenging the ALJ's evaluation of the supportability factor as to each doctor.
2 (*See, e.g.*, Doc. 19 at 16 ["The ALJ committed materially harmful error by rejecting the
3 assessments from Drs. Sy and Singh without providing sufficient explanation supported by
4 substantial evidence, including failing to explain the consideration of the supportability
5 and consistency factors under the regulations for evaluation of medical source opinions."]);
6 *id.* at 19 [challenging the ALJ's determination that "Dr. Sy's assessments were unsupported
7 by her own records"]; *id.* at 21 [challenging "the ALJ's belief the assessments [of Dr.
8 Singh] were unsupported by Dr. Singh's records"].)

9 Given these determinations, it is unnecessary to resolve the Commissioner's
10 objection to the R&R's conclusion that the ALJ provided legally insufficient reasons for
11 discrediting Plaintiff's symptom testimony. Reversal is warranted regardless of whether
12 that conclusion stands.

13 Finally, the Court sustains the Commissioner's objection to the R&R's conclusion
14 as to the appropriate remedy (*i.e.*, a remand for calculation of benefits). "The credit-as-
15 true analysis has evolved in our circuit over time, thus providing a challenge for application
16 by the district court." *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). As the Ninth
17 Circuit has clarified in recent opinions, "[a]n automatic award of benefits in a disability
18 benefits case is a rare and prophylactic exception to the well-established ordinary remand
19 rule." *Id.* *See also Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th
20 Cir. 2014) ("[O]ur jurisprudence . . . requires remand for further proceedings in all but the
21 rarest cases.").

22 "The credit-as-true rule has three steps. First, we ask whether the ALJ has failed to
23 provide legally sufficient reasons for rejecting evidence, whether claimant testimony or
24 medical opinion. Second, we determine whether the record has been fully developed,
25 whether there are outstanding issues that must be resolved before a determination of
26 disability can be made, and whether further administrative proceedings would be useful.
27 And third, if no outstanding issues remain and further proceedings would not be useful,
28 only then do we have discretion to find the relevant testimony credible as a matter of law.

1 Even if all three steps are met, the decision whether to remand a case for additional
2 evidence or simply to award benefits is in our discretion.” *Washington v. Kijakazi*, 72 F.4th
3 1029, 1041 (9th Cir. 2023) (cleaned up). A district court properly exercises its discretion
4 to remand for further proceedings where “there is serious doubt as to whether [the claimant]
5 is disabled.” *Leon*, 880 F.3d at 1048. *See also Brown-Hunter v. Colvin*, 806 F.3d 487, 495
6 (9th Cir. 2015) (“[E]ven if all three requirements are met, we retain flexibility in
7 determining the appropriate remedy. We may remand on an open record for further
8 proceedings when the record as a whole creates serious doubt as to whether the claimant
9 is, in fact, disabled within the meaning of the Social Security Act.”) (cleaned up).

10 The credit-as-true rule is inapplicable here. Although step one is satisfied in light
11 of the ALJ’s failure to provide legally sufficient reasons for, at a minimum, discrediting
12 the opinions of Drs. Sy and Singh, step two is not—further administrative proceedings
13 would be useful to enable the ALJ to attempt to provide more specific explanations (and
14 more precise record citations) in support of the challenged negative-credibility
15 assessments.

16 A remand for further proceedings is warranted for the additional reason that, having
17 conducted the required *de novo* review of the record, the Court harbors serious doubt as to
18 whether Plaintiff is, in fact, disabled. Plaintiff told one treatment provider she had no
19 limitations in her activities of daily living, which she described as including “sometimes
20 watch[ing] my youngest grandchild” and “[t]he rest of the day just watch[ing] television.”
21 (AR at 633.) However, Plaintiff testified during the hearing that her notice and
22 concentration problems interfere with “trying to watch a television show . . . [or] even a
23 movie . . . because I don’t know what’s going on.” (AR at 87.) Although the R&R did not
24 view these statements as materially inconsistent for purposes of the ALJ’s credibility
25 assessment (Doc. 23 at 17 n.3), in the Court’s view they raise serious doubts that underscore
26 why the extraordinary remedy of a remand for calculation of benefits is unwarranted here.
27 *Cf. Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014) (rejecting the claimant’s
28 argument that “because the ALJ’s reasons for discrediting her testimony and Dr. Riley’s

1 assessment are legally insufficient, we have no choice but to . . . remand for an award of
2 benefits” and concluding that a remand for further proceedings was the appropriate remedy
3 because, even though “Claimant may be disabled,” “evidence in this record not discussed
4 by the ALJ” cast serious doubt on the claim of disability).

5 Accordingly,

6 **IT IS ORDERED** that:

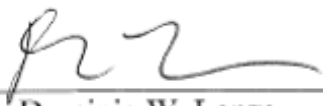
7 (1) The Commissioner’s amended objections to the R&R (Doc. 26-2) are
8 **overruled in part and sustained in part.**

9 (2) The R&R (Doc. 23) is **adopted in part and rejected in part.**

10 (3) The decision of the ALJ is **reversed** and this matter is **remanded for further**
11 **proceedings.**

12 (4) The Clerk shall enter judgment accordingly and terminate this action.

13 Dated this 21st day of March, 2024.

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18 Dominic W. Lanza
19 United States District Judge
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